

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-3rd June, 2016

CRM-M No.30333 of 2015

Pardeep Kumar.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

AND

CRM-M No.30778 of 2015

Naresh Kumar.

.....Petitioner.

Versus

State of Haryana

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. N.S. Shekhawat, Advocate for the Petitioner
(in CRM-M No.30333 of 2015).

Mr. R.S. Rai, Senior Advocate assisted by
Mr. Gautam Dutt, Advocate for the Petitioner
(in CRM-M No.30778 of 2015).

Mr. Gaurav Dhir, Deputy Advocate General, Haryana.

JASWANT SINGH, J.

This common order shall dispose of both the aforementioned
petitions for grant of anticipatory bail as they emerge out of the same FIR.

By way of aforesaid two petitions, petitioners, namely, Pardeep Kumar and Naresh Kumar, who are serving as ASI and Inspector in Haryana Police have sought indulged of this Court to seek concession of pre-arrest bail under Section 438 Cr.PC in case FIR No.102 dated 06.07.2014 for offences punishable under Sections 420, 467, 468, 471, 120-B of Indian Penal Code, Sections 7/13 of the Prevention of Corruption Act and Section 61 of the Punjab Excise Act, registered with Police Station Sadar Rewari.

The involvement of these petitioners has surfaced during the course of further investigation as they have allegedly let of certain persons involved in the crime as well as the material recovered (liquor boxes) was further sold.

Originally, the FIR came to registered on the basis of secret information, whereby details of the vehicle carrying illicit liquor was given and whereupon the police party including the Petitioner-Pardeep Kumar took necessary steps to apprehend the same by laying a check post/nakka on 6.7.2004. One truck Ashoka Leyland with registration no.HR-47-B 1275 was seen coming from Jhajjar side carrying liquor for transportation to Gujarat. The occupants of the vehicle, namely, Ashru and Raj Singh were apprehended upon their failure to show the authorized possession and transportation of liquor. Resultantly, the case punishable under Section 61/1/14 of the Punjab Excise Act was registered.

Though the investigation in respect of this offence was done and challan stood submitted before the Court of competent jurisdiction against the occupants of the vehicle, namely, Ashru and Raj Singh and the trial had commenced which is also at the initial stage.

The response of the State was sought for and Sh. Ashish

Chaudhary, HPS, DSP has filed his affidavit dated 7.11.2015 giving the details and back ground leading to the order of further investigation and indictment/involvement of the petitioners along with others. It is highlighted that though the challan was submitted against Ashru and Raj Singh, but the case file was scrutinized by the Inspector General of Police and it was found that the investigation was deficient and had shortcomings. It was *prima facie* found that the whereabouts of the vehicle and its ownership were never examined and resultantly, as the accused Ashru had given the particulars of the owner, namely, Jogga resident of Jakhopur and the said person is yet to be arrested. It was ordered that the solid proof be obtained and action be taken against him as per law and the report be sent to the I.G. Within 15 days.

It was in this way the further investigation commenced and it was found that the original number of the vehicle in question is UT-23H-9179 and the actual owner of the vehicle was Jarafat Ali and the vehicle was also financed. The other accused Jogga was also arrested on 01.08.2015 and on his disclosure further his associate Bhupinder (wine contractor) was also found involved, who was also arrested and the involvement of Police officers of CIA, Rewari came to the light and resultantly, the offence punishable under Section 7 & 15 of the Prevention of Corruption Act was added. The involvement of these two officers is described in para 8 of the affidavit, which reads as under:-

“ That it is very important to mention here that as per the disclosure statements Rs.30,000/- were recovered from accused Partap Singh and Rs.40,000/- from accused Mukesh Kumar and Rs.60,000/- from accused Bhupender. It is also

very important to mention here Inspector Naresh Kumar and ASI Pardeep Kumar have handed over the truck with the illicit alcohol to accused Mukesh Kumar and charged Rs.1,50,000/- by Inspector Naresh Kumar and Rs.50,000/- by ASI Pardeep Kumar as illegal gratification. Thereafter Inspector Naresh Kumar also charged Rs.2 lacs from the uncle of accused Jogga @ Joginder etc., to declare them innocent in the present case.”

Learned Counsel for the petitioners by placing reliance upon the judgments passed by the Hon'ble Supreme Court in **Dharam Pal Vs. State of Haryana & Ors. 2016(1) RCR 926**, **State of Andhra Pradesh Vs. A.S. Peter (2008)2 SCC 383** and also **Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors. 2013(2) RCR (Criminal) 197** have contended that the further investigation without the order of the Magistrate is not permissible and the offence, if any, against the petitioners ought to have been registered by way of separate FIR.

Learned State Counsel submits that keeping in view the provisions of Section 173(8) Cr.PC and the law laid down by Hon'ble Supreme Court in Vinay Tyagi's case (*supra*) reiterated in Dharam Pal's case, prior permission of the Magistrate for “further proceedings” is required at best as a matter of propriety. Mere non seeking of the prior permission would not in the facts of the present case as reflected from the affidavit dated 7.11.2015 would enure a right with the petitioners to confess with the further investigations are bad. He further submits that keeping in view the nature and gravity of the offences, no case for grant of anticipatory bail to both the petitioners is made out.

At the very outset, it is necessary to examine the provisions of

Section 173(8) of the Criminal Procedure Code, which contemplate the “further investigation.” A reading of the same clearly indicates that the officer incharge of the police station, if finds or obtains further evidence, oral or documentary he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed. Though there is no mention of any mandatory permission to be obtained from the Magistrate before entering into further investigation but it has been interpreted in various judgments that it is obligatory for the officer concerned to inform the Magistrate or seek his permission as a matter of propriety. In **Vinay Tyagi's case** there was two conflicting reports submitted by two different agencies and the issues involved were whether the trial Court has the jurisdiction to ignore any one of the reports and secondly, whether the CBI is empower to conduct fresh investigation. The Hon'ble Supreme Court has held that the fresh and denovo investigation can only be ordered by the High Court and the Magistrate has no power to order fresh and denovo investigation. It is further held that the court of competent jurisdiction is duty bound to consider all records. In this very case, the provisions of Section 173(8) Cr.PC were examined by the Hon'ble Supreme Court and it was held that it was different from reinvestigation, fresh or denovo investigation. Paras 14 & 15 of the judgment are reproduced below:-

“ 14. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under [Section 173\(2\)](#) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for

investigation passed by the court of competent jurisdiction in terms of [Section 156\(3\)](#) of the Code.

15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of [Section 173 \(8\)](#). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation. ”

In the present case, there is no dispute that no such information

was given to the Magistrate or any permission was sought for entering into the further investigation but that fact alone is not sufficient to hold the “further investigation is illegal. In **State of Andhra Pradesh Vs. A.S. Peter**, the Hon'ble Supreme Court has held that Law does not mandate taking of prior permission of Magistrate for further investigation which is the statutory right of the Police. Para no.9 of the judgment reads as under:-

“ Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the chargesheet is a statutory right of the police. A distinction also exists between further investigation and re- investigation. Whereas re-investigation without prior permission is necessarily forbidden, further investigation is not. ”

In the light of the above, it is absolutely clear that even if there is neither any intimation to the learned Magistrate nor any permission sought as a matter of propriety for further investigation, would not vitiate the investigation. Similar is the view in Dharampal's case as well.

At the same time, Section 36 of the Code of Criminal Procedure contemplates the powers of the Superior Officers of the Police, which reads as under:-

“ Powers of superior officers of police. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. ”

It is in exercise of these powers that the Inspector General of

Police had passed the order for further investigation as crucial and important aspect of the case was found missing in the investigation. The order of “further investigation” though not passed by the Magistrate but has been passed by a competent authority and therefore, there is nothing wrong in the proceeding of the investigation as far as the petitioners are concerned. The substance of further investigation is dependent upon any further oral or documentary evidence, which is obtained after submission of report under Section 173 (2) Cr.PC. The affidavit of the DSP has revealed the recoveries and involvement of the petitioners and other accused in the crime. The evidence and indictment of the petitioners is certainly in continuation with the original offence and therefore the investigation relating to the petitioners cannot be termed as a fresh or denovo investigation.

The argument that a separate FIR ought to have registered is again without any force for the reason that the offences for which the petitioners have been indicted are directly related to the original offence. The charges faced by the petitioners are certainly different and distinct but at the same time inseparable from the original offence as there involvement is directly linked and attached to the original offence. Allegedly the petitioners after having recovered the liquor misappropriated the same and have further allegedly let of the accused involved in the crime by receiving illegal gratification. It is evident that the present accused persons are accused of different offence but the same are committed in the course of the same illegal transaction and if they are jointly charged in the same FIR, no prejudice is to be caused to any of the accused, instead, on the contrary it is in the interest of justice if the prosecution of all the offences takes place in one trial.

In view of the above and considering the gravity of the offences, the extraordinary concession of pre-arrest bail to both the aforesaid petitioners is not made out.

Dismissed.

**(JASWANT SINGH)
JUDGE**

June 3rd, 2016
Vinay